IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JODHPUR

JUDGMENT

Smt.Mogi & ors. Vs. Arjun Lal & ors.

S.B. CIVIL MISC. APPEAL NO.1689/2006.

Against the award dated 09.05.2001 made by the Motor Accidents Claims Tribunal, Doongarpur in Claim Case No.215/1998.

Date of Judgment :: 7th March 2007.

HON'BLE MR. JUSTICE DINESH MAHESHWARI

Mr. P.S. Chundawat, for the appellants.
Mr. Manoj Bhandari, for the respondent No.3.

BY THE COURT:

The application for compensation submitted by the wife, four minor children and mother of the vehicular accident victim Nanu Ram Meena, about 30 years in age, who expired on 07.05.1998 due to the injuries sustained in an accident that occurred on National Highway No.8 near Kherwara on 06.05.1998 at 5:30 p.m. when the jeep bearing registration No. RJ 12 C 0361 he was travelling in was hit from behind by a truck bearing registration No. GQA 7129, has been rejected by the Motor Accidents Claims Tribunal, Dungarpur by impugned award dated 09.05.2001 on the ground that the claimants have not produced any eye-witness in relation to the accident and have failed to establish negligence on the part of the non-

applicant No.1, truck driver. Hence this appeal by the claimants.

The claimants-appellants sought compensation against the driver, owner and insurer of the truck involved in the accident aforesaid, with the submissions that the deceased was earning about Rs.8,000/- per month making furniture on contract basis and was earning another Rs.20,000/- a year in agriculture and was the only bread-earner of the family. The driver and owner of the truck remained ex parte and the claim application was put to contest by the insurer of the truck while stating denial of the claim averments and with the submissions that the deceased was unauthorisedly travelling as a passenger in the jeep; that for the jeep driver suddenly halted the vehicle without any indication in the middle of the road and in violation of traffic rules that the truck following, but being driven at a slow and controlled speed, collided with the jeep; and that there was no mistake on the part of the non-applicant No.1. The non-applicant-insurer also raised the objection that the driver, owner, and insurer of the jeep in question were not made parties to the claim application and also submitted that if at all contributory negligence be found in both the drivers, its liability would be limited to the extent of contribution of the truck driver. The non-applicant-insurer also alleged violation of policy condition on the grounds that the driver was not

holding valid driving licence, that the vehicle was being driven without requisite registration, fitness and permit; and that the owner of the vehicle did not timely inform the insurer of the accident.

The Tribunal awarded interim compensation to the claimants in the sum of Rs.50,000/- on 'No Fault Liability' under Section 140 of the Motor Vehicles Act by its order dated 07.01.2000; and then framed the following issues on 13.03.2000 for determination of the questions involved in the case:-

> "1- आया प्रश्नगत वाहन संख्या ट्रक GQA 7129 के चालक विपक्षी संख्या एक के द्वारा दिनांक 6.5.98 को 5.30 पी.एम पर खैरवाड़ा से छाणी जाने वाले मोड़ पर उक्त वाहन को उपेक्षा/उतावलेपन से चलाकर की गई दुर्घटना में आई चोटों के परिणामस्वरूप श्री नानूराम की मृत्यु हुई ?
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> 2- आया उक्त वाहन चालक तब उक्त वाहन स्वामी विपक्षी सं. दो के नियोजन में होकर उसी के हितार्थ एवं लाभार्थ कार्य कर रहा था ?
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> 3- आया विपक्षी संख्या तीन बीमा कंपनी द्वारा अपने लिखित कथन की प्रारम्भिक आपत्तियों एवं विशेष कथन के मद्देनजर बीमा कंपनी अपने दायित्व से मुक्त हो सकती है नहीं तो इसका प्रभाव ?
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> 4- आया दावेदार अपने दावे में अंकित प्रश्नगत राशि या अन्य कोई न्यायसम्मत राशि पा सकते हैं हां तो कौन कौन दावेदार कितनी कितनी राशि, किस किस विपक्षी से एवं किस प्रकार से पा सकते हैं?"

In documentary evidence the claimants produced certified copies of charge sheet filed against the driver of the truck as Ex. 1; first information report as Ex. 2; post-mortem report as Ex. 3; site inspection report as Ex. 4; statements recorded during investigation as Ex. 5,6&7; registration certificate of the truck in question, again marked as Ex. 7; and driving licence of the truck driver as Ex.8. In oral evidence the claimants examined only the wife of the deceased Smt. Mogi as PW-1 and closed their evidence. The non-applicant wished not to lead any evidence and, accordingly, final arguments were heard and the Tribunal took up the matter for disposal by its impugned award dated 09.05.2001.

The entire of the discussion of the Tribunal on issue No.1 reads thus:

> "तनकी संख्या-1
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> (5) पी डब्ल्यू-1 प्रार्थिया श्रीमती मोगी प्रस्तुत हुई है जो कि दुर्घटना की चश्मदीद गवाह नहीं है। केवल मृतक का दुर्घटना के कारण मर जाने का तथ्य प्रमाणित करती है। घटना का कोई भी चश्मदीद गवाह प्रार्थीगण द्वारा प्रस्तुत नहीं किया गया है। किसी साक्ष्य के अभाव में यह प्रमाणित नहीं हो पाता है कि विपक्षी सं0-1 ने विवादित ट्रक को लापरवाही या उत्तेजना से चलाया हो और जीप को पीछे से टक्कर मार दी हो। विपक्षी सं0-3 का तर्क है कि जीप चालक ने जीप को अचानक सड़क के बीचों बीच ब्रेक लगाकर रोका है जिससे पीछे से धीरे से आती हुई ट्रक जीप से टकरा गई। हालांकि विपक्षीगण ने भी कोई साक्ष्य प्रस्तुत नहीं की है। लेकिन तथ्यों का विवाद होने के कारण प्रार्थीगण को विपक्षी सं0-1 के द्वारा ट्रक को

लापरवाही या उत्तेजना से चलाना प्रमाणित करना आवश्यक था। साक्ष्य के अभाव में तनकी संख्या-1 का निर्णय प्रार्थीगण के विरूद्ध किया जाता है।"

In issue No.2, the Tribunal held that the non-applicant No.1 was driving the vehicle in the employment of non-applicant No.2; and in issue No.3 merely observed that indisputably the truck in question was insured with the non-applicant No.3. In issue No.4, the Tribunal referred to the statement of Smt. Mogi that the deceased was serving on a saw-machine at Dungarpur and was earning Rs.5,000/- per month and was further earning Rs.5,000/- per month in making furnitures. The Tribunal observed that the claimant has exhibited the police documents Ex.1 to Ex.8 and has admitted in the cross-examination that the fact of the deceased working on a saw-machine was not stated in the claim application. However, thereafter the Tribunal abruptly concluded the matter because, according to the Tribunal, the decision on issue No.4 was redundant in view of the decision on issue No.1 and the claimants were allowed an amount of Rs.50,000/- under Section 140 of the Act that was sufficient. With these observations and on these considerations the Tribunal has proceeded to reject the claim for compensation altogether.

The approach of the learned Judge of Tribunal is

difficult to appreciate. The factum of vehicular accident involving two vehicles and resultant demise of the victim, the essential and fundamental aspects for maintaining a claim for compensation are not in dispute. The accident occurred when the truck GQA 7129 hit from behind the jeep RJ 12 C 0361 the deceased was travelling in. It is also noticed that though the claimants have examined only the wife of the deceased Smt. Mogi as PW-1 who was not an eyewitness but then, the non-applicants have not produced any evidence whatsoever. Then, the claimants have produced police investigation papers including the site inspection report Ex.4. On the basis of evidence made available on record by the claimants and so also for the evidence omitted to be produced by the non-applicants, the Tribunal could have, and ought to have, decided in issue No.1 the responsibility towards accident; and could not have rejected the claim application merely for want of eyewitness. Disposal of the claim application made by the dependants of a 30 years old vehicular accident victim in, to say the least, such a cursory manner is shocking; and is rather painful to notice.

The learned Judge of the Tribunal has totally failed to consider that the strict provisions of the Evidence Act are not insisted upon for the inquiry and trial of a claim for compensation on account of vehicular accident; and the police

investigation papers related with the accident in question prepared by the investigating agency in discharge of its official duties are not the waste papers to be ignored from consideration altogether.

Learned counsel for the appellants has rightly referred to the decision of this Court in the case of Rajasthan State Road Transport Corporation Vs. Nand Kishore & Ors. : 2002 RAR 30 that,-

> "The Police Officer is a public servant and the Site Inspection Map and Site Inspection Memo are record made in discharge of his official duties, and entries in such record are relevant fact under Sec. 35 of the Indian Evidence Act and as such those documents are public documents as these are prepared by public servant while discharging his official duties and as such admissible in evidence."

and that,-

> "Thus, it is well settled that strict provisions of Evidence Act are not to be insisted by the Tribunal on limited jurisdiction. The Tribunals while dealing the cases for compensation arising out of Motor Vehicle accident are to follow such summary procedure as it thought fit and the certified copy of the FIR, Inspection Map and Site Inspection Memo, Panch Nama, Injury Report or the Post Mortem Report, as the case may be, and, other relevant documents prepared by the police or the doctor while discharging official duty are admissible in evidence without there being a formal proof."

In the present case, if the learned Judge of Tribunal would have taken trouble to examine the documentary evidence produced on record, it would have been clear that in relation to the accident in question the investigating agency had filed challan against the truck driver for offence under Section 279 IPC; and the site inspection report (Ex.4) prepared during the course of investigation indicated that the truck hit the jeep from behind with substantial force because the jeep was thrown a long distance ahead on its right-hand side down the road. For undeniable fact situation of the present case that the truck in question hit the jeep from behind and where the non-applicant-insurer alleged that the jeep halted on the running highway without indication, it cannot be said that the claim application is liable to be rejected only because no eyewitness to the accident has been examined. There is no reason for not finding in the first place that the accident occurred for the fault and mistake, or at least omission of reasonable care and caution, on the part of the truck driver in hitting the jeep from behind in daylight at about 5:30 p.m. in the month of May 1998. Secondly, the suggestion on the part of the non-applicant that the truck was being driven at a slow speed in controlled manner remains hollow for being not substantiated by the requisite evidence; and is substantially contradicted by the site inspection report. Thirdly,

if any adverse inference is to be drawn, the same goes squarely against the non-applicants for not producing the relevant witness, i.e. the driver of the truck involved in accident. In the cumulative effect of the evidence as produced on record by the claimants and as withheld by the non-applicants, there appears no reason why the truck driver be not held responsible for the accident.

The finding on issue No.1 is reversed and it is held that the accident causing fatal injuries to Nanu Ram occurred for rash and negligent driving of the truck in question.

It appears apposite to point out that even if it be assumed for the sake of arguments that there was some contribution in the occurrence on the part of the jeep driver also, yet for the victim, who was an occupant of the jeep, it would only be a case of composite negligence of the two drivers and in that event too, the claimants were and are entitled to claim compensation against the persons related with both or either of the vehicles involved in accident. There is no material on record to find that there was absolutely no contribution to the incident on the part of the truck driver; and then, there is no allegation that the victim contributed to the accident or to the injuries in any manner. Viewed from any angle, the claim for compensation could not have been rejected for so-called want of production of eyewitness; and

the respondents related with the truck involved in accident remain liable for compensation.

It was contended during the course of submissions by learned counsel appearing for the insurer that if this Court comes to a conclusion contrary to the finding recorded by the Tribunal on issue No.1, the matter deserves to be remanded to the Tribunal concerned for decision afresh on other issues because the insurer has its plea on violation of policy conditions; and quantum of compensation is also to be calculated.

So far the plea of violation of policy conditions is concerned, the submissions aforesaid for remand of the matter do not merit acceptance for the fundamental reason that the insurer has consciously chosen not to lead any evidence though afforded opportunity therefor. The claimants closed their evidence on 07.03.2001 and the matter was placed for non-applicants' evidence on 09.04.2001 when it was adjourned for the lawyers not appearing and was placed on 01.05.2001. On this date, the non-applicant-insurer voluntarily closed its evidence and specifically submitted that they were not interested in leading evidence. Any contention relating to the violation of policy conditions requires the proof of basic facts in that relation, particularly about the terms and conditions of the insurance policy and their breach by the

insured burden wherefor remains with the insurer. It appears that the non-applicant-insurer being aware of baselessness of its objections, has chosen not to lead any evidence. Merely because the Tribunal has rejected the claim application with an entirely erroneous approach and its finding on responsibility towards the accident is reversed in appeal filed by the claimants, it cannot afford a ground to the insurer of the vehicle involved in accident to get the trial of the claim case re-opened for the purpose of its defence that had consciously been given up before the Tribunal. Finding on issues Nos.2 and 3 need no further dilatation.

So far quantum of compensation is concerned, the Tribunal has treated issue No. 4 redundant because, according to the Tribunal, fate of the claim application was sealed with its finding on issue No. 1. It is needless to reiterate that the Tribunal has proceeded to dispose of the matter in a rather cursory manner; and it being a matter open to appeal, finding on issue No. 4 ought to have been recorded. However, the matter concerns claim for compensation by the dependants, wife, minor children and mother of vehicular accident victim; and once it has been found that the non-applicants remain liable for compensation, it does not appear necessary to remand this matter relating to the accident that occurred about 9 years back; rather it appears appropriate and

in the interest of justice to quantify the compensation payable on the basis of material, whatever, available on record.

It takes to quantification of just and reasonable compensation in this case. The age of deceased has been stated at 30 years in the claim application and so also in the postmortem report Ex.3. However, AW-1 Smt.Mogi has stated the age of her husband at about 35 years. Thus, even on minimum, a multiplier of 16 could safely be applied for calculation of compensation for the claimants. So far earnings of the deceased are concerned, there is no direct documentary evidence available on record to find that the deceased was earning in the contract work of furniture and further from agriculture. In any case, the agricultural income, if there were any, having retained itself to the claimants cannot be ruled out. However, the deceased was maintaining a family of seven persons including himself, wife, four minor children in the age group of about 10 to 4 years and mother in the age of 60 years. Even on a conservative estimate with reference to the period of incident of the year 1998, the income of the deceased could be taken at Rs. 2,100/- per month as a daily-rated labourer earning wages of Rs. 70/- per day. Calculated on this basis, after deducting one-third on personal expenditure of the deceased, the loss of dependency comes to Rs.1,400/- per month, i.e. Rs.16,800/- per annum; and with

application of multiplier of 16, pecuniary loss stands at Rs.2,68,800/-. Allowing Rs.30,000/- towards non-pecuniary loss with Rs.5,000/- for each of the six claimants and another Rs.1,200/- towards funeral expenses, the loss for the claimants stands at Rs.3,00,000/-. Thus, taking an overall picture into account, this court is clearly of opinion that the claimants are entitled for compensation minimum in the sum of Rs. 3,00,000/- together with interest at the rate of 6% per annum from the date of filing of claim application, after adjustment of the amount already received on No Fault Liability.

In the result, this appeal succeeds and is allowed; the impugned award dated 09.05.2001 is set aside; the claim application is partly allowed and award of compensation in the sum of Rs. 3,00,000/- is made in favour of the claimant-appellants; and after deducting Rs.50,000/- received under 'No Fault Liability', the claimants-appellants shall be entitled to compensation in the sum of Rs.2,50,000/- together with interest at the rate of 6% per annum from the date of filing of claim application.

The respondent-insurer shall deposit the amount payable under this award within 30 days with the Tribunal and upon deposit, the Tribunal shall proceed with apportionment and disbursement in the manner that Rs.25,000/- with interest

thereupon shall be kept in a Monthly Income Scheme of Post Office in the name of each of the children of the deceased, i.e. the appellants Nos. 2, 3, 4 and 5 for a minimum period of seven years; Rs.1,00,000/- with interest thereupon shall be placed in Monthly Income Scheme of Post Office in the name of wife of the deceased, appellant No.1 Smt. Mogi for a minimum period of five years; and another Rs.25,000/- with interest thereupon shall be placed in such deposit in the name of mother of deceased, appellant No.6 Smt. Haker for a minimum period of three years. Remaining amount may be paid cash to the wife of the deceased. The parties shall bear their own costs throughout.

(DINESH MAHESHWARI), J.

Mohan/